80-1449

Office-Supreme Court, U.S.
FILED
FEB 17 1981
ALEXANDER L. STEVAS,
CLERK

NO.

in the Supreme Court of the United States

October Term, 1980

THE STATE OF FLORIDA,
Petitioner,

vs.

SHEROLYN DENISE HARRISON,
Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District

BRIEF OF PETITIONER ON JURISDICTION

JIM SMITH
Attorney General

CALVIN L. FOX
Assistant Attorney General
401 N.W. Second Avenue
(Suite 820)
Miami, Florida 33128
(305) 377-5441

Of Counsel:
JANET RENO
State Attorney

IRA N. LOEWY
Assistant State Attorney
1351 N.W. 12th Street
Miami, Florida 33125

QUESTION PRESENTED

WHETHER THE DECISION OF THE FLORIDA DISTRICT COURT, RELYING UPON THIS COURT'S DECISIONS IN *UNITED STATES V. MENDENHALL*, _____ U.S. _____, 100 S.Ct. 1870 (1980) and *REID V. GEORGIA*, _____ U.S. _____, 100 S.Ct. 2752 (1980) AND DIRECTLY CONSTRUING THE FOURTH AMENDMENT AS APPLIED TO THE STATES THROUGH THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, HOLDING: 1) THAT THE MERE APPROACH OF A POLICE OFFICER IS A DETENTION/STOP; 2) THAT THE FACTS THEREFORE CONSTITUTE A STOP AND FURTHER THE FACTS DO NOT AMOUNT TO ARTICULABLE SUSPICION AND PROBABLE CAUSE; 3) THAT ALL CO-CALLED "PROFILE" TRANSACTIONS ARE ILLEGAL NO MATTER WHAT THE FACTS ARE UNDER *REID V. GEORGIA*, IS A MISAPPLICATION OF THE FOURTH AMENDMENT AND THIS COURT'S DECISIONS IN *REID* AND *MENDENHALL* AND IS IN DIRECT AND SUBSTANTIAL CONFLICT WITH THE RULE OF THIS COURT IN *UNITED STATES V. MENDENHALL*, *SCHNECKLOTH V. BUSTAMONTE*, 412 U.S. 218 (1973) AND *TERRY V. OHIO*, 392 U.S. 1 (1968)?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CITATIONS	iii
PREFACE	vii
OPINIONS BELOW	viii
JURISDICTION	ix
CONSTITUTIONAL AND STATUTORY PROVISIONS	x
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	10
ARGUMENT	11
CONCLUSION	30

TABLE OF CITATIONS

UNITED STATES CASES	Page
Adams v. Williams, 407 U.S. 143 (1972)	11, 12, 25, 27
Brown v. Texas, 433 U.S. 47 (1979)	8, 11
Delaware v. Prouse, ____ U.S. ____, 99 S.Ct. 1391 at 1396 (1979)	27
Draper v. United States, 358 U.S. 307 (1959)	9, 11, 29
Dunaway v. New York, ____ U.S. ____, 99 S.Ct. 2248 at 2260 (1979)	28
Nash v. Florida Industrial Commission, 389 U.S. 235, n.1 (1967)	xi
Reid v. Georgia, ___ U.S. ___, 100 S.Ct. 2752 (1980)	i, 9, 11, 12, 24, 25, 28-30
Schneckloth v. Bustamonte, 412 U.S. 218 (1973)	i, 8, 11, 24, 28, 30
Stone v. Powell, 428 U.S. 465 (1976)	29

TABLE OF CITATIONS (Continued)

Page

Terry v. Ohio,
392 U.S. 1 (1968) ..... i, 8, 11, 13, 14, 15, 18, 24, 27, 30

United States v. Brignoni-Ponce,
422 U.S. 873 (1975) 8, 9, 11

United States v. Mendenhall,
___ U.S. ___, 100 S. Ct. 1870 (1980) ... i, 8, 9, 11, 16, 18, 24, 25, 27-30

UNITED STATES CONSTITUTION

Amendments IV and XIV ..... i, xi

UNITED STATES CODE

28 U.S.C. §1257(3) xi

OTHER AUTHORITIES

Carpenter v. Sigler,
419 F.2d 169 (8th Cir. 1969) 14

Cimino v. State,
390 So.2d 795 (Fla. 3d DCA 1980) 13, 24

TABLE OF CITATIONS (Continued)

Page

Correa v. State,
389 So.2d 1204 (Fla. 3d DCA 1980).....12, 24

Dodi Publishing Co. v. Editorial America S.A.,
385 So.2d 1369 (Fla. 1980)..... xi

Harrison v. State,
389 So.2d 293 (Fla. 3d DCA 1980)..... x

Hetland v. State,
366 So.2d 831 (Fla. 2d DCA 1979)..... xi

Hetland v. State,
387 So.2d 963 (Fla. 1980)..... xi

Jenkins v. State,
385 So.2d 1356 (Fla. 1980)..... xi

Major v. State,
389 So.2d 1203 (Fla. 3d DCA 1980).....12, 24

Monohan v. State,
390 So.2d 756 (Fla. 3d DCA 1980).....12, 24

Royer v. State,
389 So.2d 1008 (Fla. 1980)..... 9, 12, 20-25

St. Paul Title Insurance Co. v. Davis,
_____ So.2d _____ (Fla. 1980), Fla. S.Ct. Case
No. 59,245 opinion filed November 13, 1980... xi

TABLE OF CITATIONS (Continued)

Page

State v. Frost,
374 So.2d 593 (Fla. 3d DCA 1979)..... 7, 12, 18-20

State v. Fry,
622 F.2d 1218 (5th Cir. 1980)..... 18

Stuart v. State,
389 So.2d 4 (Fla. 2d DCA 1980)..... 12

United States v. Andrews,
474 F.Supp. 456 at 462 (D. Colo. 1979)..... 30

United States v. Elmore,
595 F.2d 1036 at 1039-1040
(5th Cir. 1979)..... 12, 18, 19

United States v. Garcia,
450 F.Supp. 1020 (E.D.N.Y. 1978)..... 25

United States v. Gorman,
355 F.2d 151 at 158-159 (2d Cir. 1965)..... 28

United States v. Price,
599 F.2d 494, 500 (2d Cir. 1979)..... 25

United States v. Vasquez-Santiago,
601 F.2d 1069 (2d Cir. 1979)..... 25

United States v. Williams,
622 F.2d 80 (5th Cir. 1980) *en banc*..... 11, 27

TABLE OF CITATIONS (Continued)

Page

United States v. Wylie,
569 F.2d 62 (D.C. Cir. 1977) 14

Wilson v. Porter,
361 F.2d 412 (9th Cir. 1966) 14

§893.13 Fla. Stat. 1

§893.135 Fla. Stat. 1

U.S.Sup.Ct.R.20.1 xi

PREFACE

The Petitioner, THE STATE OF FLORIDA, was the Appellee, in the District Court of Appeal of Florida, Third District, and the prosecution in the Florida trial court. The Respondent, Sherolyn Denise Harrison, was the Appellant in the Florida District Court and the defendant in the trial court. In this brief, the parties will be referred to as they appeared in the Florida trial court below.

The following references are made in this brief:

(A) For the portions of the record below sufficient to show jurisdiction in this court, which are contained in the Petitioner's Appendix and consist of page A1-A86.

I.

OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, reversing the Florida trial court's denial of the Defendant's Motion to Suppress, is reported at *Harrison v. State*, 389 So.2d 293 (Fla. 3d DCA 1980). The opinion of the Florida District Court is contained in the State's Appendix at A72. There is no official reporter for citation to this opinion.

II.

JURISDICTION

On November 14, 1980, the District Court of Appeal of Florida, Third District, denied the State's timely Petition for Rehearing. A83. The State of Florida by timely Motion obtained an extension of time (per Justice Powell) in which to submit its Petition for Certiorari herein. The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, §1257(3) and Amendments IV and XIV of the United States Constitution.

The interpretation of the Florida Constitution and the United States Constitution are identical for purposes of the application of the criminal law and search and seizure issues. *Hetland v. State*, 366 So.2d 831 (Fla. 2d DCA 1979) *approved and adopted, Hetland v. State*, 387 So.2d 963 (Fla. 1980). The Florida District Court *per curiam* opinion, makes the Florida District Court the Florida Court of last resort herein as a matter of law. *See, Dodi Publishing Co. v. Editorial America S.A.*, 385 So.2d 1369 (Fla. 1980); *Jenkins v. State* 385 So.2d 1356 (Fla. 1980); *see, also, St. Paul Title Insurance Co. v. Davis*, _____ So.2d _____ (Fla. 1980), Fla.S.Ct. Case No. 59,245, opinion filed November 13, 1980. This Court therefore has jurisdiction. *See, Nash v. Florida Industrial Commission*, 389 U.S. 235, n.1. (1967); U.S.Sup.Ct.R.20.1. The constitutional issues were firmly presented at all levels below. *See*, A2-3; A84-A86.

III.

CONSTITUTION AND STATUTORY PROVISIONS

Amendment IV of the Constitution of the United States provides that:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment XIV of the Constitution of the United States provides that:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

IV.

STATEMENT OF THE CASE

The Defendant, Sherolyn Denise Harrison, was charged by information with "possession" and "trafficking" in cocaine in violation of Sections 893.13 and 893.135 Florida Statutes, arising out of her attempt on August 9, 1979, to transport more than one hundred and forty (140) grams of cocaine in her infant child's diaper, through Miami International Airport. The Defendant filed a pretrial Motion to Suppress, in which she claimed her Fourth and Fourteenth Amendment rights under the United States Constitution were violated. *See*, A1-A4. The Florida trial court denied the Defendant's Motion to Suppress after a hearing.

At the hearing upon the Motion to Suppress, the State produced one witness, Detective Jody Wolfe of the Airport Narcotics Unit of the Organized Crime Bureau of the Dade County Public Safety Department. *See* A 9. Detective Wolfe testified that she had been a police officer for six (6) years and had been with the airport unit approximately one (1) year at the time of the incident herein. A9-A10. Detective Wolfe further testified as to her extensive training and experience in narcotics investigation both formal in informal including programs and courses conducted by local colleges; the State Attorney's Office; the Organized Crime Bureau and the Drug Enforcement Agency of the federal government. A10-A11. Wolfe indicated that her position and assignment is the detection and interdiction of narcotics at Miami International Airport. A11. Wolfe said that she observes passengers several days a week

and daily observes from several hundred to several thousand passengers on any given day. A11. Wolfe testified that Miami is a major source city for narcotics, in particular, cocaine and marijuana. A11-A12. Basically narcotics are transported in "body carrys," in luggage or in freight packs. A13.

Detective Wolfe testified that on August 9, 1979, she was on duty about 5:20 o'clock p.m. with Detective Everette Titus when she first observed the Defendant. A14. Wolfe said that the detectives' attention was first drawn to the co-defendants, a man named Evans, and a woman named Raymond. A15-A16. Wolfe said the Defendant *in particular* stood apart as if she was not with Evans or Raymond. A38. Wolfe also indicated that Evans and Raymond seemed to try to act as if they were not together at certain points. *See*, A38. Wolfe said that she observed Evans cut in front of a line of fifteen to twenty people at the National Airlines counter, by climbing over the rope separating the line from the counter. A15-A16. Evans thereupon spoke with Raymond briefly, who had walked over to Evans and told her to wait in another line. A17. As Evans paid for apparently *only* one ticket voucher with four (4) or five (5) hundred ($100) dollar bills from a large roll of cash, he indicated to Raymond who was in another line, to go ahead to the terminal. A16-A17; A40; A41. Evans had requested a flight to Los Angeles. A17. Neither Raymond, Evans nor the Defendant had any luggage. A17-A18. Evans and Raymond were each carrying a small tote bag. A17.

Detective Wolfe said that after Raymond left the line Raymond met with the Defendant who was carrying

a small child one and one half (1½) to two (2) years old, who was described in the testimony below as a "toddler." A18; *see* A50. Up to this point the detectives did not think that the Defendant was together with Evans and Raymond. A38-A39. Detective Wolfe emphasized in her testimony that the defendants had no luggage for their trip to Los Angeles. *See,* A18; A17. Wolfe testified that although Evans "caught up with" the two women, Raymond and the Defendant, when Detective Titus approached Evans after they passed the security checkpoint (*see,* A19), the women continued walking ahead (*see,* A18; A19). Wolfe said that the women looked back quickly and saw Detective Titus speaking with Evans; looked quickly at each other and *then began walking more quickly down the concourse.* A19.

At this point, Detective Wolfe went over to Raymond and the Defendant and introduced herself as Detective Wolfe, a police officer and asked if they had any objection; could she speak with them for a moment. A20; A22. Detective Wolfe explained why she identifies herself as a police officer, thus:

> "A [Continuing] It's been my experience that people who are sometimes carrying narcotics *are afraid of a ripoff from some other source* and would be more likely to be afraid of some stranger walking up to them *and, maybe, react violently.*" [Emphasis added].
>
> A20.

Detective Wolfe said that in response to her inquiry, Raymond said "sure" and the Defendant nodded in the affirmative. A43. Wolfe asked if they would mind showing

her some identification and subsequently the Defendant said her name was Harrison. A22. Raymond was fumbling around for identification, but did not produce any identification. A22; A25. Detective Wolfe and the women were about fifteen feet ahead of Detective Titus and Evans and about twenty-five (25) to thirty (30) feet from the checkpoint at this point in the transaction. A22-A23. The two women had their backs to Evans and Detective Titus. A23. Detective Wolfe said that both women were extremely nervous, which Wolfe found unusual, because normal airline passengers in her experience are not nervous at conversing with a police officer and in particular, herself. A23; *see* A45. Thereupon Detective Wolfe asked both women if she could look through their belongings and explained to them that they did not have to let her examine their belongings. A24. Both women stated that they had no objection. A24. Wolfe testified that in the totebag Raymond was carrying, she found three (3) one-way tickets dated August 4, 1979, (five days earlier), for trips from Los Angeles to Miami. A25; *see*, A24-A25. The tickets were made out to "Mr. and Mrs. Caan" and "Mr. Jones." *See*, A24-A25. Also in Raymond's bag were an identification with Raymond's correct name; three used first class passes and one or two marijuana cigarettes. A24; A25, *see*, A47-A48. The Defendant thereupon told Detective Wolfe that she was from Miami, but was going to Los Angeles for a few days and Raymond said that she was living in Los Angeles and was going home. A25-A26. Raymond said that they had no luggage. A26.

At this juncture, the Defendant, Harrison, was holding the infant child in front of her. A26. The infant was dressed in a two piece outfit consisting of slacks

and a smock top. A26-A27. At this point, Evans and Detective Titus came up and they began to continue walking down the concourse. A25; A27. Detective Wolfe learned that Evans had purchased a single ticket voucher for "Mr. and Mrs. Kahn" and "Mrs. Johnson." A27. Evans had told Detective Titus that his name was "Mr. Kahn," but then he had no identification, but then Evans changed his story again and said that his name was "Oswald." A27. Detective Titus observed that Evan's Totebag had the name "Harrison" on it. A28. At this point in the hearing Detective Wolfe testified, thus:

> "[By Detective Wolfe]: A. The inconsistencies, the use — the inconsistencies and the story that was given by Evans coupled with the use of alias names for this trip to Los Angeles coupled with such a small amount of luggage for a party of three with a baby travelling across country one way, suggested to me the possibility that there was a violation of narcotics laws going on; that, perhaps, these people were smuggling narcotics."
>
> A28.

When the parties arrived at the terminal gate, Evans gave the tickets to Raymond and told her to go get the boarding passes. A29. Detective Wolfe said that she observed "Kahn" on the new ticket voucher rather than "Caan," and the new ticket indicated "Johnson" rather than "Jones," which were the names on the August 4, 1979 ticket stubs, that Detective Wolfe had seen in Raymond's purse. A29; *see*, A24-A25. Wolfe

specifically testified that both women were wearing tight-fitting clothing and that therefore they were not body-carrying narcotics. A46-A47. However, Wolfe said that the potpourri of names further confirmed her belief in the defendant's overt efforts to conceal their activities, using an alias. A28; *see*, A50.

Detective Wolfe testified that as she walked down the concourse toward the gate after speaking with the women, she became suspicious of the conspicuous bulge in the area of the infant's abdomen. A29. Wolfe said that the child's midriff was exposed (*see*, A29) and that the child's diaper bulged out two to three times as much on the abdomen, which was partially exposed, as the child's rear. A29. Wolfe said that the bulge was not consistent in any respect with her experience in the normal diapering of an infant and that the bulge protruded out as much as two inches from the child's body. A29-A30; *see*, A52. Detective Wolfe testified that in her experience, she had seen on six (6), previous occasions the efforts of a narcotics courier to transport narcotics in such a manner in a child's diaper. A30. Wolfe also testified that on forty (40) previous occasions she has observed body-carrys of narcotics and that the bulge on the child was entirely consistent with a belief that the Defendant was attempting to transport narcotics in her child's diaper. A30-A31. Detective Wolfe said that she believed that in her experience the substance in the bulge in the child's diaper was cocaine and she became concerned for the safety and welfare of the child. A32. Wolfe explained that if the cocaine was in contact with the child's skin or the mucous membranes of the child's vagina, it could be quite dangerous or even fatal to the child. A32; A54. Wolfe said that even experienced

investigators avoid direct contact with their skin on seized narcotics, because they never know what's in it, even aside from the possible dangers of irritation or adsorption of the stuff. *See*, A55. She said that she has had experience in several cases, where a courier incurred a rupture of a container of narcotics in a body orifice and was dead before he reached the hospital. A57. Detective Wolfe emphasized that in her experience any amount of adsorption in such a small child could be "quite dangerous" or even fatal. *See*, A32; A57. When the parties arrived at the departure area Detective Wolfe asked the Defendant to put the child down and Detective Wolfe thereupon felt the bulge in the child's diaper and determined that it was a powdery and granular substance, which she believed was cocaine. A31; A55. At that point she arrested the Defendant and determined that a "pamper" type diaper was between the bag of cocaine and the child's skin. A33-A34. Wolfe testified that she decided not to disturb the bag of cocaine by opening it quickly. A34. Evans and Raymond were also arrested for conspiracy. A33-A34. The bag of cocaine was sent to the laboratory for analysis and was one hundred and forty (140) grams of cocaine. *See*, A35-A36. Detective Wolfe testified that she was never discourteous to the Defendant; she never attempted to conceal her identity; she never threatened or demanded anything and the Defendant was coherent, cooperative and understood everything at all times during the transaction. A35-A36. The Defendant presented no evidence or exhibits whatsoever and then rested her case. *See*, A6; A62.

Upon the Motion to Suppress defense counsel 1) argued that under *State v. Frost*, 374 So.2d 593 (Fla. 3d DCA 1979) (Schwartz, J.) and this Court's decision in

Brown v. Texas, 433 U.S. 47 (1979), *that the mere approach of Detective Wolfe for conversation was detention;* 2) *that there was no probable cause for the search;* and 3) *that Officer Wolfe needed permission to search the baby's diaper. See,* A62-A67. The prosecutor argued 1) that the initial transaction was a mere contact – the Defendant was free to go; 2) that the bulge and profile provided articulable suspicion; 3) that the officers acquire probable cause to believe a felony was being committed and it was reasonable therefore to search the child's diaper and 4) that suppression would only serve to frustrate good faith law enforcement. *See,* A68-A70. The trial court denied the Motion to Suppress finding, that the initial discussion was lawful and that there was probable cause for the search. A71-A71.

On appeal to the Florida Third District Court of Appeal, the Defendant again argued, 1) *that the mere identification of a police officer is a constitutional detention and the officers had no right to even approach the Defendant without articulable suspicion;* 2) *that the officers had no articulable suspicion;* 3) *that the search of the child was without probable cause and* 4) *that even if the bulge on the child was narcotics, the officers couldn't search it unless they thought it was a weapon.* The State argued vigorously 1) that the evidence below was undisputed; 2) that based upon *United States v. Mendenhall*, _ U.S. _, 100 S.Ct. 1870 (1980), *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) and *Terry v. Ohio*, 392 U.S. 1 (1969) that the initial transaction was not a constituitonal "stop" but a mere "contact" between an officer in a position, which she had a right to be in and citizen on a public concourse; 2) that based upon *Brown v. Texas*, 433 U.S. 47 (1979), *United States v. Brignoni-*

Ponce, 422 U.S. 873 (1975) and *Draper v. United States*, 358 U.S. 307 (1959), Officer Wolfe developed both articulable suspicion and then probable cause to believe that a felony was being committed in her presence; 3) that the actions of the officers were clearly undertaken in good faith based upon the circumstances as presented to them and suppression would serve only to frustrate the State's good faith efforts to stem the tide of chronic narcotics traffic in Florida.

The Florida Third District Court of Appeal rejected the State's arguments and agreed with the Defendant basing its reversal upon this Court's opinions in *United States v. Mendenhall*, and *Reid v. Georgia*. *See*, *Royer v. State*, 389 So.2d 1007 (Fla. 1980) *reversed en banc* (Schwartz, J.). The court in *Royer* has held that *Mendenhall* is *contrary* to *Reid* and that all so-called "profile" transactions are illegal under *Reid*, no matter what the observed facts are. 389 So.2d at 1017, n.6 and 1019-1020. The Florida District Court's opinion states only in a summary fashion thus:

> "PER CURIAM.
>
> "The conviction under review will be reversed because the trial court erred in denying the motion to suppress the contraband. See: Royer v. State, 389 So.2d 1007 (Fla. 3d DCA 1980), United States v. Mendenhall, _ U.S. _, 100 S.Ct. 1870, 64 L.Ed.497 (1980); Reid v. Georgia, _ U.S. _, 100 S. Ct. 2752, _ L.Ed.2d _ (1980), Case No. 79-448, opinion filed June 30, 1980.

Reversed and remanded for further proceedings not inconsistent herewith."

A72-A73.

A member of the Florida District Court panel specially found that there was a search without probable cause because there was no weapon:

"HUBBART, Judge (concurring)

"I concur in the court's reversal in this cause solely on the ground that there was no reasonable basis on this record for the police to have conducted a full blown search of the defendant — even assuming, as the state contends, that the police either effected no prior temporary stop of the defendant at the airport or did so based on founded suspicion. As such, the search here was unreasonable and its fruits should have been suppressed by the trial court upon the defendant's timely motion. *Sibron v. New York*, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968)." [Citations omitted].

The State filed an extensive Petition for Rehearing, which was summarily denied. A74-A83.

V.

SUMMARY OF ARGUMENT

The decision of the Florida District Court, relying upon this Court's decisions in *United States v. Mendenhall*,

_ U.S. _, 100 S.Ct. 1870 (1980) and *Reid v. Georgia*, _ U.S. _, 100 S.Ct. 2752 (1980) and directly construing the Fourth Amendment, is a misapplication of the Fourth Amendment and this Court's decisions in *Reid* and *Mendenhall* and is in direct and substantial conflict with the rule of this Court in *Mendenhall*, *Schneckloth v. Bustamonte*, and *Terry v. Ohio*. In view of this Court's recent decisions, in *Mendenhall* and *Reid* leaving the present issues in a state of some confusion, this Honorable Court should correct the misapplication of *Reid* and *Mendenhall* herein. The exclusionary rule should not be applied in the circumstances of the case at bar, where the officers acted in good faith. *See, United States v. Williams*, 622 F.2d 80 (5th Cir. 1980), *en banc*.

VI.

ARGUMENT

The decision of the Florida Courts cannot be reconciled with the decisions of this Court in *United States v. Mendenhall*, ___ U.S. ___, 100 S.Ct. 1870 (1980); *Terry v. Ohio*, 392 U.S. 1 (1978); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); and *Adams v. Williams*, 407 U.S. 143 (1972). The State submits first of all, that in the circumstances of the case at bar, the initial transaction herein was not prohibited by the Fourth and Fourteenth Amendments but was a mere "contact" between a police officer in a position that he had a right to be in and citizen on the street. *Terry v. Ohio; United States v. Mendenhall; Schneckloth v. Bustamonte. Secondly*, under *Brown v. Texas*, 4430 U.S. 47 (1979), *Draper v. United States*, 358 U.S. 307 (1959) and *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) the officers

clearly developed both articulable suspicion and eventual probable cause to believe that a felony was being committed in their presence. The officers had a duty to act upon the obvious circumstances in their experience and would have been derelict in their duties had they not done so. *See, Adams v. Williams*, 407 U.S. at 145-146; *United States v. Elmore*, 595 F.2d 1036 at 1039-1040 (5th Cir. 1979). In the opinion cited by the District Court in *Royer v. State*, 389 So.2d 1007 (Fla. 3d DCA 1980) (*reversing reported panel opinion en banc*), the Florida Third District Court of Appeal has rejected the mandate of *Terry, Mendenhall, Schneckloth, Brown, Draper*, and *Adams v. Williams*, in the airport context, in favor of what it erroneously perceives as the ruling of this Court in *Reid v. Georgia*, __ U.S. __, 100 S.Ct. 2752 (1980). The District Court gives force of law a previous "attraction" to the concept that *any* approach by a police officer is a "stop." *See, State v. Frost*, 374 So.2d at 597-598 (Fla. 3d DCA 1979); *Royer*, 389 So.2d at 1019. Under the guise of *Royer* and *Reid* the Florida Third District Court of Appeals has embarked upon a course (*in addition to that in the case at bar*), of wholesale reversals of Florida trial court findings of consent and articulable suspicion in the airport context. *See, Correa v. State*, 389 So.2d 1204 (Fla. 3d DCA 1980) (*reversed upon rehearing subsequent to Royer assuming that the mere approach of a police officer is a "show of authority"*); Stuart v. State, 389 So.2d 4 (Fla. 3d DCA 1980) (*reversed see Royer* and *Frost*); Major v. State, 389 S.2d 1203 (Fla. 3d DCA 1980) (Schwartz, J.) (*reversed on rehearing after Royer even though the Defendant signed a written consent from and was advised of a right to refuse consent*); *Monohan v. State*, 390 So.2d 756 (Fla. 3d DCA 1980) (*assuming after Royer that the approach of narcotics*

officers in a airport is a "stop" per se); *Cimino v. State*, 390 So.2d 795 (Fla. 3d DCA 1980) (*'reversed see Reid and Royer'*). The State has brought three separate petitions before this Court, in *Florida v. Rodriguez;* U.S.Sup.Ct. Case No. 80-1158; *Florida v. Stuart*, U.S.Sup.Ct. Case No. 80-1319 and the present case, which each demonstrate the misapplication of *Reid* and *Mendenhall* and the failure of the Florida District Court to properly apply the prohibitions of the Fourth Amendment. As in the case at bar, the Florida Third District controls the substantive law in airport cases, located as it is, in Miami, Florida, the nation's most chronic drug courier terminal.[1] Furthermore, as in the case at bar, where the State has no other avenue for review, this Honorable Court should take jurisdiction and overturn the Third District Court of Appeal.

In the case at bar, there is no testimony, but that the officers merely approached and contacted a citizen on the street. Under *Terry v. Ohio, supra*, and its

---

[1]Just during the eighteen (18) months period from October 1, 1977, through May 31, 1979, the Miami International Airport unit *identified* three hundred and eighty-six (386) narcotics couriers and seized thirty (30) pounds of quaaludes; four hundred and thirty (430) pounds of cocaine and fifteen thousand (15,000) *pounds* of marijuana *just* being transported through Miami International Airport in suitcases, briefcases, and in bodycarrys. A . During an eight (8) month period preceding May 31, 1979, the Airport Narcotics Unit also seized twenty-four (24) pounds of heroin. Seizures of cocaine and marijuana in South Florida set national records for frequency and quantity. These figures are significantly larger than the seizures before this Court in *Mendenhall. See, United States v. Mendenhall*, 596 F.2d 706, at 708, n.1 (6th Cir. 1979), Weick, J. Dissenting.

progeny, a police officer may approach a citizen for three separate reasons: 1) arrest; 2) stop and investigation and 3) mere contact. *See, e.g., United States v. Wylie,* 569 F.2d 62 (D.C. Cir. 1977); *Carpenter v. Sigler,* 419 F.2d 169 (8th Cir. 1969); *Wilson v. Porter,* 361 F.2d 412 (9th Cir. 1966); *see also, United States v. Mendenhall.* The predicate for each of these categories is different; as are the consequences. In order to justify an arrest, there must exist probable cause to believe that a crime has been committed and that the defendant committed it. In order to justify a *stop and detention,* the police must be able to articulate an objective, reasonable bases for belief that a crime has been will be, or is currently being committed. *Terry v. Ohio, supra.* Such a stop gives the police the power to detain a citizen against his will for the limited purpose of investigation. The third form of approach, a mere *contact* consists of simple common sense. *See, Terry v. Ohio; United States v. Mendenhall; United States v. Wylie.* In a mere *contact* the officer may not detain a citizen at all. He has only a common right to engage in voluntary conversation and if the citizen does not wish to respond, he need not, and may simply walk away. *See, e.g., United States v. Wylie,* at 67. This natural, common sense conclusion is predicated upon the fact that ordinary threshold discourse between police officers and citizens on the street is not cause for constitutional alarm. *Terry v. Ohio, United States v. Mendenhall.*

In *Terry v. Ohio,* the court, through Justice Warren, stated the applicable standards herein thus:

> "It does not follow that because an officer may lawfully arrest a person only when he is apprised

> of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusion short of arrest."
>
> *Id.* at 26.

The court in *Terry* recognized that for the purpose of the Fourth Amendment, an "arrest and search" and a "stop" are to be considered "seizures." However, the court recognized that:

> "[N]ot all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the Officer, by means of physical force or show of authority has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred."
>
> *Id.* at 19, n.16.

Mr. Justice Harlan in his concurring opinion specifically recognized that the right of a police officer to address questions to other persons is a right possessed by every citizen, co-existing with the *equal* right of the person addressed to ignore his interrogator and walk away. 392 U.S., *supra*, at 32, 33. Further, in the concurring opinion of Mr. Justice White, it is stated:

> "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets."

More recently in *United States v. Mendenhall*, the court recites preliminary facts virtually identical to those herein as *not tantamount to a seizure:*

> *"We adhere to the view that a person is "siezed" only when by means of physical force of a show of authority, his freedom of movement is restrained. Only when such restraint is imposed is there any foundation whatever for involving constitutional safeguards.* The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." *United States v. Martinez-Fuerte*, 428 U.S. 543, 554, 96 S.Ct. 3074, 3081, 49 L.Ed.2d 1116.
>
> "On the facts of this case, no "seizure" of the respondent occurred. [1] The events took place in the public concourse. [2] The agents wore no uniforms and displayed no weapons. [3] They did not summon the respondent to their presence, [4] but instead approached her and identified themselves as federal agents. [5] They requested, but did not demand to see the respondent's identification and ticket. *Such conduct without more, did not amount to an intrusion upon any constitutionally protected interest. The respondent was not seized simply by reason of the fact that the agents approached her, asked her if she would show them her ticket, and identification, and posed to her a few questions. Nor was it enough to establish*

a seizure that the person asking the questions was a law enforcement official. See *Terry v. Ohio, supra,* 392 U.S., at 31, 32-33, 88 S.Ct., at 1885-1885 (Harlan, J., concurring). See also A.L.I., Model Code of Pre-Arraignment Procedure §110.1(1) and commentary at 257-261. In short, nothing in the record suggests that the respondent had any objective reason to believe that she was not free to end the conversation in the concourse and proceed on her way, and for that reason we conclude that the agent's initial approach to her was not a seizure.

"*Our conclusion that no seizure occurred is not affected by the fact that the respondent was not expressly told by the agents that she was free to decline to cooperate with their inquiry, for the voluntariness of her responses do not depend upon her having been so informed.* See *Schneckloth v. Bustamonte,* 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854. *We also reject the argument that the only inference to be drawn from the fact that the respondent acted in a manner so contrary to her self-interest is that she was compelled to answer the agent's questions.* It may happen that a person makes statements to law enforcement officials that he later regrets, but the issue in such cases is not whether the statement was self-protective, but rather whether it was made voluntarily.

"*The Court's decision last Term in Brown v. Texas,* 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357, *on which the respondent relies, is not*

apposite. It could not have been plainer under the circumstances there presented that Brown was forcibly detained by the officers. *In that case, two police officers approached Brown in an alley, and asked him to identify himself and to explain his reason for being there. Brown "refused to identify himself and angrily asserted that the officers had no right to stop him." Id.,* at 49, 99 S.Ct., at 2639. *UP TO THIS POINT THERE WAS NO SEIZURE.* But after continuing to protest, the officer's power to interrogate him, Brown was first frisked, and then arrested for violation of a state statute making it a criminal offense for a person to refuse to give his name and address to an officer 'who has lawfully stopped him and requested the information.' " [Emphasis added].

100 S.Ct. at 1877-1878.

In the case at bar, consistent with the mandate of *Terry v. Ohio, Schneckloth v. Bustamonte,* and *United States v. Mendenhall,* the trial court affirmatively found that the Defendant had voluntarily consented both to speak with and to provide Officer Wolfe with identification. These circumstances do *not* amount to a "stop" within the meaning of the United States Constitution. *Terry v. Ohio; United States v. Mendenhall; see also, United States v. Fry,* 622 F.2d 1218 (5th Cir. 1980); *United States v. Elmore,* 595 F.2d 1036 (5th Cir. 1979).

For reversal, the Defendant relied heavily in the Florida District Court upon the analysis in *State v. Frost, supra.* In *Frost,* in a *state appeal,* the court *held*

that because it was a state appeal, and the appellate record *failed to show* that the Appellant's license and airline ticket were *immediately* returned to the Appellant, the Court would *assume* that ticket and license were *not* immediately returned.[2] *See*, 374 So.2d at 595-596 at 598. The *Frost* court concluded that therefore *automatically*, a "stop" had been effected by the Officer, despite the evidence to the contrary. *See*, 374 So.2d at 598; *contra*, *United States v. Elmore*, 595 F.2d 1036 (5th Cir. 1979) (*the momentary possession of the defendant's ticket is not a "stop"; the officers acquired articulable suspicion through the defendant's false identification prior to walking away the defendant's ticket*). The *Frost* court in its *holding*, further *severely* critized the United States Fifth Circuit Court of Appeals in *Elmore*, for what the *Frost* court viewed, as holding, "*that it makes a constitutional difference as to the restraint on one's liberty whether an officer with a traveler's ticket in his hand remains face to face with the individual or walks away from him,*" and holding, "*that the fruits of an unlawful search or seizure* [*can*] *retroactively serve to sustain it.*" *See*, 374 So.2d at 598, n.4. The *Elmore* court, did neither of these things, but rather, approved the right of a police officer to approach anyone on the street and engage him in a voluntary conversation. *Accord*, e.g., *Terry v. Ohio* and *Mendenhall*.

Apart from the apparent holding in *Frost* above and *central* to the *Frost* court's complaint about *Elmore*

---

[2]This issue was neither presented nor argued by anyone in the trial court.

and the present analysis, is the discussion in *Frost*, wherein the *Frost* court opined that:

> "In applying these standard to airport searches like the one involved in this case, many courts have held that a Fourth Amendment stop occurs as soon as officers initially approach an individual, identify themselves, and begin to question him. [Citing] *United States v. Coleman*, 450 F.Supp. 433, 439 (E.D.Mich. 1978):
>
> *Id.* at 597.

In *Royer v. State*, the reported panel opinion *rejected* the *Frost* analysis above, 389 So.2d at 1011-1012, and adopted a view that observed facts, which happen to fit a "profile" were sufficient to provide articulable suspicion and/or eventual probable cause. 389 So.2d at 1014. *In Royer the facts were identical to those in Mendenhall:*

> "The facts leading up to the search and seizure of the marijuana were the following. Officers Johnson and Magdalena, of the Dade County Safety Department, were plainclothes detectives assigned to the County's Crime Bureau, Narcotics Investigation Section, performing duty at Miami International Airport as members of what was known as the Smuggling Detail, consisting of a sergeant and eitht officers, who worked in pairs, on shifts. Said officers had acquired knowledge of a "profile" by which it was possible with a substantial measure of certainty to recognize couriers or carriers of drugs in air travel. Such profile had been arrived

at by experiences of narcotics officers with a great number of such persons in main drug distribution centers and the target city destination places.

Miami was a known point from which imported drugs, including marijuana, were transported to other target destination cities, one of which was New York City. It was known that commercial airlines were used for such transport of drugs by such couriers and others. On a certain day, at the Miami International Airport, the above-named officers observed the defendant as he was about to purchase a ticket on an airline. The defendant's appearance and mannerisms, his luggage and the way he dealt with it, and his means of obtaining his ticket, etc., as observed by the officers were such as to fit the profile, the details and nature of which we purposely do not here state. As disclosed through the testimony of Officer Johnson, the defendant was observed to fit the profile of a drug courier.

The defendant checked his two suitcases, placing identification labels thereon bearing the name "Holt," but without stating his address or telephone number in the spaces provided therefore on the labels. The officers noted the name which the defendant placed on the suitcases.

As the defendant was proceeding to enter the concourse leading to the boarding area, after

having obtained his ticket and checked his suitcases, the officers approached him, identified themselves as police officers, and asked him if he had time to talk with them, which he said he did. There followed a series of requests by the officers, to none of which the defendant objected, and to each of which the defendant assented. Those consisted of his initial consent to talk to the officers, his production upon request of his ticket (which was to New York City), and his driver's license for identification (which driver's license for identification (which showed his name to be Mark Royer, not Holt which was the name on the ticket); his consent to move with them out of the main room into a vacant side room for further conversation; his consent to the officer's request that the suitcases be opened (after Johnson had retrieved the suitcases). When the officers requested his consent to the opening of the suitcases, the defendant produced a key from his pocket and unlocked one of the cases. He explained that he did not know the combination of combination lock on the other suitcase, and upon request gave his consent to the opening of the other case by the officers, which they did with the aid of a screwdriver. The search revealed the suitcases contained 65 pounds of marijuana."

389 So.2d at 1008-1009.

The panel opinion affirmed the concept of a mere contact and consent, opining that:

> "Here there was no coercive action by the officers. There was no use of force. They did not touch him, or display any weapon, or make any demands. There was no show of force other than the fact, as revealed to the defendant, that Johnson and Magdalena were police officers. The statement to the defendant by one of the officers, when requesting his consent to the opening of the suitcases, that they had reason to believe the cases contained drugs or contraband was not a threat, but rather an explanation of why they were requesting consent to search the cases. The requests which the officers made of the defendant were made politely, and the defendant so testified."
>
> *Id.* at 1010.

Upon rehearing, the *dissent* to the panel opinion *authored* the *en banc* reversal of both the previous panel and the trial court, holding that under *Frost, supra,* the defendant was *"arrested"* when he consented to go to the *"interrogation room."* 389 So.2d 1018-1019. Mirroring its previous dissenting opinion, the *en banc* opinion refers to the factual finding of consent by the trial court as, *"THE ALLEGED CONSENT." Id.* at 1019. The new opinion also rejects the fact that the defendant gave an alias to the airlines as *inconsequential* and further *ridicules* the narcotics officer's observations as *"amateur psychiatry"* that should be *"completely disregarded." Id.*, at 1016-1017; 1017, n.4. *The District*

Court, per Schwartz, J., then concluded that under Reid v. Georgia, all so called "profile" stops were illegal irrespective of what the observed facts are, and noted that Mendenhall is "contra." 389 So.2d at 1019, and 1017 n.6. Important to the present analysis, *the Royer court also refused to dispell or disapprove of the dicta in Frost that a constitutional "stop" occurs as soon as a policeman identifies himself to a citizen on the street. Id.*, at 1018 n.8.

The *Frost* court had noted that it was "attracted" by the line of reasoning in *Coleman.* In the case at bar, and in decisions subsequent to the *Royer en banc* reversal above, the Florida District Court has given the "attraction" in *Frost,* force of law. *See, Monohan v. State,* 390 So.2d at 757; *Correa v. State,* 389 So.2d 1205; *Cimino v. State, supra; Major v. State,* 389 So.2d at 1204. In *Monohan, Correa* and *Major* the Florida Third District Court assumes a constitutional "stop" and/or couches its analysis in terms of a *constitutional "submission to apparent authority,"* where all that has occurred (*as in the case at bar*), is identification by the plain clothes narcotics officers and their asking if the courier has a moment to talk and/or asking for consent.

The State of Florida in the case at bar and in the decisions above and those that it has brought to this Court, is, faced with a judicial impasse in the Third District Court of Appeal, the seat of the nation's most chronic drug traffic. It is plainly evident in the case at bar, that *contrary* to *Terry v. Ohio; Schneckloth v. Bustamonte* and *United States v. Mendenhall,* the Florida District Court has departed from any correct constitutional analysis under the guise of this court's views in *Reid v. Georgia.*

The utter confusion in the *Royer* as to this Court's opinions in *Reid and Mendenhall*, is causing substantial disruption and confusion in the State's prosecution efforts. The failure of the Florida District Court to properly apply this Court's recent decisions in the *Reid and Mendenhall* is emblematic of its failure to properly apply *Terry v. Ohio*, in the airport context. At each carefully defined step, from initial observation to investigation and arrest, the officers' conduct was completely in compliance with the applicable legal requirements. *See, Adams v. Williams; United States v. Vasquez-Santiago*, 601 F.2d 1069 (2d Cir. 1979); *see also, United States v. Price*, 599 F.2d 494, 500 (2d Cir. 1979); *United States v. Garcia*, 450 F.Supp. 1020 (E.D.N.Y. 1978). In *Adams v. Williams*, 407 U.S. 143 (1972), this Court explained:

> "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response. *See id.*, at 23, 88 S.Ct., at 1881. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time. [citations ommitted]".
>
> *Id.*, at 145-146.

In the case at bar, the eventual arrest of the Appellant *was not a random circumstance.* Detective Wolfe testified as to her extensive training a experience in detecting narcotics couriers. She testified that Miami is a major source city for narcotics and in particular, cocaine and marijuana. Based upon her experience, she observed and learned 1) that the codefendants and the Defendant were acting as they were not together; 2) Evans paid for the ticket voucher with four or five hundred dollar bills from a large roll of hundred dollar bills; 3) the women walked more quickly with visible alarm at the approach of Detective Titus to speak with Evans; 4) the women were unusually nervous at the conversation with Detective Wolfe; 5) the Defendant and the codefendants had no luggage even though the Defendant was allegedly going to California with a small child and the codefendant had been in Miami at least five (5) days; 6) the Defendant and the codefendants were all travelling under an alias and had travelled to Miami under aliases and Evans overtly falsified his name giving yet another alias; 7) in Detective Wolfe's experience, the women's story was inconsistent and their answers to simple questions were evasive; 8) the bulge in the child's diaper was inconsistent with the clothing and body of the female child and not consistent with normal diapering of an infant; but instead was entirely consistent with body-carry's of narcotics; Detective Wolfe, in her experience has observed on six (6) other infants and narcotics bulges that she has observed on forty (40) previous occasions. The State submits that based upon her experience and training, and her actual observation of the instant fact situation, Detective Wolfe was absolutely reasonable, prudent and correct in her conclusion based upon her specialized training and

experience and observations, that the Defendant was transporting narcotics in the infant's diaper. Any other conclusion upon these facts is *"unreasonable" and constitutes a manifest refusal to give any credence to Adams v. Williams, Terry v. Ohio,* and *United States v. Mendenhall.* Under *Adams v. Williams,* it would have been negligent of Officer Wolfe to simply shrug her shoulders and let this criminal transaction go unheeded. The State submits that it is manifestly erroneous to suggest that the present observed facts did not amount to articulable suspicion and probable cause in the training and experience of Detective Wolfe. *See, Delaware v. Prouse,* _____ U.S. _____, 99 S.Ct. 1391 at 1396 (1979).

The Florida District Court, in applying the Fourth Amendment to the airport context herein, has failed utterly to apply the balancing test under the Fourth Amendment explained and exemplified in *Mendenhall. See also, United States v. Williams,* 622 F.2d 80 (5th Cir. 1980), *en banc.* The District Court herein and in the decisions noted above has created a rule of law under the Fourth Amendment where all any experienced courier need do in Florida, is to reveal all and then complain that he only acted pursuant to a subjective implied coercion. This Court rejected such analysis in *Schneckloth,* thus:

> *"It is not unreasonable for officers to seek interviews with suspects or witnesses or to call upon them at their homes for such purposes. Such inquiries, although courteously made and not accompanied with any assertion of a right enter or search or secure answers, would permit the criminal to defeat his prosecution by*

voluntarily revealing all of the evidence against him and then contending that he acted only in response to an implied assertion of unlawful authority. [Quoting *People v. Michael*, 45 Cal.2d at 754, 290 P.2d, at 854, Traynor, J.]' [Emphasis added].

412 U.S. at 230.

Accord, United States v. Gorman, 355 F.2d 151 at 158-159 (2d Cir. 1965). The Florida District Court under the guise of this Court's opinions in *Reid* and *Mendenhall*, contrary to the advise of *Schneckloth* has permitted drug couriers to avoid prosecution by a bare claim of a response to an implied assertion of authority, where the only evidence was that the transaction was entirely voluntary. The Florida District Court has at the same time employed an extraordinary and strained analysis for probable cause and articulable suspicion, *far exceeding any requirement of reasonableness under the United States Constitution*, to defeat the State's good faith efforts at law enforcement. *See, Dunaway v. New York*, ___ *U.S.* ___, 99 S.Ct. 2248 at 2260 (1979), (Mr. Justice White concurring).

In the present case, the immediate safety of the child must prevail to warrant an immediate examination of the bulge. *See also, Draper v. United States*, 358 U.S. 307, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959). The absolute failure of the Florida District Court to apply any balancing test under the Fourth Amendment is a misapplication of the constitution and *Reid* and *Mendenhall*. In the nation's most chronic narcotics courier terminal, the Florida Third District Court is Florida's leading court upon the present issues and now under the guise of this Court's opinions in *Reid* and *Mendenhall* sits as a

judicial roadblock to the State's lawful prosecution efforts. To deny that these Detectives had reasonable belief that it was more likely than not, that the Defendant was transporting narcotics upon the facts known to them in the case at bar, is to deny the validity of their extensive training and experience, contrary to the cited opinions of this Court. Under the guise of this Court's views in *Reid* and *Mendenhall*, the Florida Third District Court has relegated the State investigations and probable cause, where it had a reliable informant; a narcotics dog or the narcotics fall into plain view. This Court must act to correct this grievous constitutional error.

In the case at bar, the detectives simply responded in good faith to the obvious circumstances, which they observed as trained narcotics investigators. The detectives also responded in good faith to the overt manifestations of consent of the Defendant. The application of the exclusionary rule to the good faith actions of these detectives is nonsensical and contrary to any intended purpose under the United States Constitution. *See, United States v. Williams, supra; see also, Stone v. Powell*, 428 U.S. 465, 496-516 (1976) (Burger J. concurring). Where the exclusionary rule has served its purpose it should not be extended now such that all it serves to do is to frustrate the lawful interdiction of narcotics traffic by excluding unimpeachable evidence. *See, Stone v. Powell; Williams, supra.*

VII.

CONCLUSION

The Petitioner submits that there is a substantial federal question herein in the airport context regarding

the construction of this Court's opinions in *Mendenhall, Reid, Terry v. Ohio, Adams v. Williams,* and *Schneckloth v. Bustamonte.* The utter confusion in the opinion in *Royer* as to this Court's opinions in *Reid* and *Mendenhall,* is causing substantial disruption and confusion in the State's prosecution efforts in South Florida, *the nation's most chronic drug courier terminal.* In the case at bar and in two companion cases in this Court, *Florida v. Rodriguez, Florida v. Stuart,* and cases like these, the State has no other source of review except in this Court. The failure of the Florida Courts to even consider a balancing test, is patently erroneously under the United States Constitution. The officers herein responded in good faith and therefore the cocaine should *not* have been suppressed where its suppression only serves to frustrate the lawful interdiction of chronic narcotics traffic. *See, United States v. Williams, supra.* Illicit narcotics traffic is insidious cancer eating at the very fabric of our society. It is clear that narcotics traffic presents a clear and present danger to the underlying fabric of this nation. The "Serbonian Bog" of the exclusionary rule should not be extended to the present circumstances. *Cf., complaint in, United States v. Andrews,* 474 F.Supp. 456 at 462 (D. Colo. 1979). In view of the circumstances of the present case and in view of *Mendenhall* and *Reid,* this Court has jurisdiction and should take jurisdiction over this matter of compelling national importance.

JIM SMITH
Attorney General

CALVIN L. FOX, Esquire
Assistant Attorney General